

AUG 29 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARION P. FRY, M.D.,

Petitioner - Appellant,

v.

DRUG ENFORCEMENT
ADMINISTRATION,

Respondent - Appellee.

No. 04-74561

DEA No. 02-2000 019018

MEMORANDUM^{*}

On Petition for Review of an Order of the
Drug Enforcement Administration

Argued and Submitted August 17, 2006
San Francisco, California

Before: CANBY, HAWKINS, and THOMAS, Circuit Judges.

The Drug Enforcement Administration (“DEA”) did not abuse its discretion in denying Dr. Marion Fry’s request to reopen. *See ICC v. Bhd. of Locomotive Eng’rs*, 482 U.S. 270, 278 (1987) (“overturing the refusal to reopen requires a showing of the clearest abuse of discretion” (internal quotation omitted)). We lack jurisdiction over

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Dr. Fry's concerns regarding the DEA's initial revocation decision. *Friends of Sierra R.R., Inc. v. ICC*, 881 F.2d 663, 666 (9th Cir. 1989) (“[A] subsequent unsuccessful petition to an agency to reopen cannot create a new final order giving our court jurisdiction over an untimely petition for review.”).

PETITION FOR REVIEW DENIED IN PART, DISMISSED IN PART.